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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
APPLICATION OF BLACK MOUNTAIN
SEWER CORPORATION, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN
ITS RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

NO. DOCKET NO. SW-02361A-08-0609

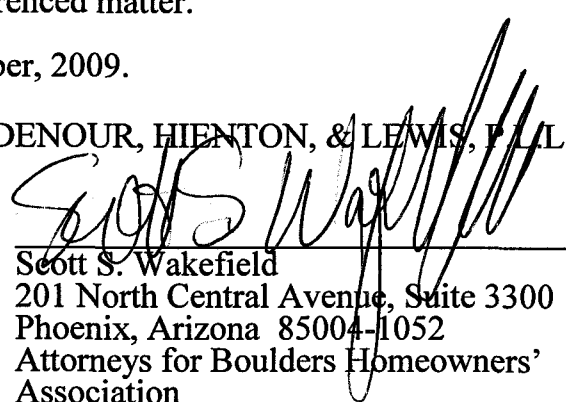
NOTICE OF FILING

Boulders Homeowners' Association hereby provides notice of filing the Direct
Testimony of Les Peterson in the above-referenced matter.

Dated this 18 day of September, 2009.

RIDENOUR, HIENTON, & LEWIS, P.L.L.C.

By


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Association

Arizona Corporation Commission
DOCKETED

SEP 18 2009

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1 ORIGINAL and 13 copies filed
2 this 8 day of April, 2009 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, AZ 85007

7 COPY of the foregoing MAILED
8 this 8 day of April, 2009 to:

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7
8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 IN THE MATTER OF THE
10 APPLICATION OF BLACK MOUNTAIN
11 SEWER CORPORATION, AN ARIZONA
12 CORPORATION, FOR A
13 DETERMINATION OF THE FAIR
14 VALUE OF ITS UTILITY PLANT AND
15 PROPERTY AND FOR INCREASES IN
16 ITS RATES AND CHARGES FOR
17 UTILITY SERVICE BASED THEREON.

NO. DOCKET NO. SW-02361A-08-0609

18 **DIRECT TESTIMONY OF**

19 **LES PETERSON**

20 **Boulders Homeowners' Association**

21
22 **September 18, 2009**
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1 **INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

3 A. My name is Les Peterson. I live at 2045 Smoketree Drive, Carefree AZ. My home
4 is located within the north (Carefree) portion of The Boulders subdivision.
5

6 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

7 A. I am testifying on behalf of the Boulders Homeowners' Association ("BHOA"),
8 which is an association of 332 home and property owners in the northern portion
9 of the Boulders community in Black Mountain Sewer Corporation's ("BMSC" or
10 the "Company") service area. The residents of the south portion of the Boulders
11 community (which is located in the limits of the City of Scottsdale) have a
12 separate homeowners association, the Owners' Association of Boulders Scottsdale
13 ("OABS"). The OABS fully supports the position of the BHOA in this matter.
14

15 **Q. WHAT IS YOUR AFFILIATION WITH BOULDERS HOMEOWNERS'**
16 **ASSOCIATION?**

17 A. I am President of the BHOA.
18

19 **Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL**
20 **BACKGROUND?**

21 A. Arizona State University; BA, 1965, MA, 1967
22 Teacher; Scottsdale, AZ School District, 1967
23 Marketing; Procter & Gamble, 1968-1971
24 Promotion Manager; The Pillsbury Company, 1971-1973
25 Executive Vice President; Glendinning Companies, 1973 – 1979
26 Founder and President; Connecticut Consulting Group, 1979-1991

1 Executive Vice President; Clarion Division of Darcy Masius Benton & Bowles,
2 1991 – 2000
3

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. I am testifying to provide the Commission information about the wastewater
6 treatment plant (the “Boulders Wastewater Plant” of the “Plant”) located within
7 the Boulders community, and an agreement the BHOA has reached with BMSC,
8 to finally and completely address the noise and odor issues associated with the
9 Plant.
10

11 **BACKGROUND ON ODOR ISSUES**

12 **Q. PLEASE PROVIDE SOME HISTORICAL BACKGROUND ON THE**
13 **ISSUE.**

14 A. The Boulders Wastewater Plant was originally constructed in about 1971. It was
15 initially constructed to serve homes within the Boulders. Even before the
16 Company received a certificate of convenience and necessity (“CC&N”) from the
17 Commission, problems with a sewer system in nearby Carefree led to the
18 absorption of that system by the Company.¹

19 In 1980 the Commission issued the original certificate of convenience and
20 necessity (“CC&N”) to Boulders Carefree Sewer Corporation (“Boulders
21 Carefree”), BMSC’s predecessor. Boulders Carefree’s CC&N application sought
22 approval to move the site for treatment of wastewater from the site of the Plant to
23 another site.² The Commission did not approve use of a substitute site for
24

25 ¹ Decision No. 53300 at 2 (1982). Until the Company acquired the Carefree system, it was not required to
26 hold a CC&N.

² See Decision No. 50544 at Finding of Fact No. 2 (attached as Exhibit A).

1 treatment of the Company's wastewater at that time because the request was "too
2 indefinite as to time and can be submitted for approval" at a later time.³ Nearly
3 thirty years later, the Boulders Wastewater Plant still operates in the center of our
4 neighborhood.

5 Over time, however, the Boulders Wastewater Plant came to service
6 approximately 50% of all of the homes - and all of the commercial establishments
7 - in the Town of Carefree (the "Town"), and it became the sole wastewater
8 treatment plant for the entire Town. Residences were built around and in
9 relatively close proximity to the Boulders Wastewater Treatment Plant prior to the
10 time its use and service area were dramatically expanded. The "sudden and
11 unexpected expansion" of the Company's service territory created severe
12 financing difficulties for the Company, which were addressed by plant capacity
13 charges⁴, an interim rate increase in 1981⁵ and permanent rate increase in 1982⁶
14 and 1985.⁷

15 As a result of the unexpected rapid expansion of the service territory, the
16 Company required an alternative source to treat its wastewater flows that
17 exceeded the capacity of the Boulders Wastewater Plant and began sending excess
18 flows to be treated by the City of Scottsdale as early as 1989.⁸ Currently, only
19 about 20 percent of BMSC's total annual raw sewage is treated at the Boulders
20 Wastewater Plant. The Plant has a permitted treatment capacity of 120,000
21 gallons per day, and flows of raw sewage to the Plant are slightly more than this
22 120,000 gallon per day in the summer months, and approximately 400,000

23
24 ³ *Id.* at pg. 10.

25 ⁴ Decision No. 50544.

26 ⁵ Decision No. 52585.

⁶ Decision No. 53300.

⁷ Decision No. 54537.

⁸ Decision No. 59944 at 2.

1 gallons/day in the winter months. All raw sewage in excess of 120,000 gallons
2 daily flows directly into the City of Scottsdale's ("Scottsdale" or the "City") sewer
3 system and is treated at the City's Water Campus treatment plant ("Scottsdale
4 Treatment Plant").

5 The Boulders Wastewater Plant is located very close to several homes.
6 Three homes are within less than 100 feet from the Plant, and 10 homes are within
7 approximately 300 feet of the Plant. Within approximately 500 feet of the
8 Wastewater Plant there are 17 homes, and within approximately 1,000 feet there
9 are between approximately 200 to 300 homes plus primary dining and conference
10 facilities of the Boulders Resort (the "Resort").

11 Over the years, particularly on occasions during the colder weather and
12 heavier BMSC system usage during the winter months, strong odors have
13 permeated throughout the Boulders. Given the strength of the odors, it was
14 difficult to specifically tell if the odors originated from the Wastewater Treatment
15 Plant or the raw sewage collection system from throughout Carefree or from both.

16 At the time of BMSC's last rate case in 2005, the odor issues (I use the term
17 "odor" to include the strong and nauseating smells, system noises and health
18 concerns resulting from raw sewage flowing out of the man-hole covers, lift
19 stations and broken collection system pipes during rains and into the streets and
20 washes) were so frequent and so pervasive that the BHOA intervened in the case
21 to bring the problem to the Commission's attention and seek its assistance in
22 getting the "odor" issues resolved. The Town also intervened in the case to raise
23 its concerns about the "odor" issues and a lift station in a commercial area.

24 The Commission's Decision in that case allocated nearly eight pages to
25 discussion of the "odor" issues, which it described as "[t]he most contentious
26

1 issue of [the] proceeding.”⁹ The Commission ordered the Company to adopt
2 either one of the two solutions that had been proposed at the hearing by the
3 Town’s witness or some alternate remedy with the agreement of all of the parties.
4 The Company then hired a consultant who proposed an alternative remedy
5 focusing upon the collection system as the primary source of the “odor” problem,
6 to which the other parties acquiesced based upon the consultant’s expertise.
7 Among other proposed solutions, the consultant’s recommended remedy involved
8 installing air jumpers between manholes along Boulder Drive. The Company also
9 corrected the slope of the collection system line on Quartz Valley Drive. The
10 Company installed the air jumpers and corrected Quartz Valley Drive line slope
11 by June 2007.

12
13 **Q. ARE THERE STILL ODOR AND NOISE ISSUES?**

14 **A.** Odors from the Boulders Wastewater Plant continue to be very noticeable by and
15 objectionable to Boulders residents, though at a lesser frequency than before the
16 air jumpers were installed and the line slope was corrected. In addition, the noises
17 of the operation of the Boulders Wastewater Plant are very noticeable from nearby
18 homes and homes as far away as an estimated 400 feet, and there is ongoing
19 traffic (service vehicles, pumper trucks, sub-contractor vehicle parking,
20 dumpsters, etc.) associated with the Wastewater Plant operations in our quiet
21 community. The BHOA has had open dialogue with Company about these
22 ongoing issues and the Company assures us that it takes our concerns seriously.
23 Since the last rate case, the Company’s behavior generally has been consistent
24 with those assurances. However, it is our understanding that it is impossible to
25

26 ⁹ Decision No. 69164 at pg. 30.

1 completely eliminate the significant remaining odors and noise from any
2 wastewater treatment plant, let alone one that is nearly 40 years old. The
3 Company has described the fact that Plant is located very close to residences as “a
4 problem of geography.” The Company has also informed us that they understand,
5 pursuant to current requirements, a facility such as the Boulders Wastewater Plant
6 would currently have required set backs of at least 1,000 feet from the nearest
7 property line of an adjacent dwelling.¹⁰

8
9 **BENEFITS OF CLOSING OF THE PLANT**

10 **Q. WHAT IS BHOA HOPING TO ACCOMPLISH BY PARTICIPATING IN**
11 **THIS PROCEEDING?**

12 **A.** BHOA intervened in this rate case in an attempt to get BMSC to shut down the
13 Boulders Wastewater Plant as soon as possible, either voluntarily or pursuant to a
14 Commission order. After all, it was the Company’s intention as early as 1980 that
15 the Plant site in the middle of a neighborhood would be replaced and the
16 Company’s wastewater would be treated at a different, and less objectionable,
17 location. Portions of the Company’s wastewater in fact has been treated at a
18 different location for the past 20 years, and it is time to finally shutter the plant
19 that was thirty years ago considered a temporary treatment plant location.

20 Fortunately, BMSC and other interested stakeholders have been cooperative
21 in our discussions with them to achieve that result. As a result, BMSC and the
22 BHOA have been able to reach an agreement (the “Settlement Agreement”) under
23 which BMSC would cease operations of the Wastewater Plant within 15 months
24 of the Commission’s Order in this case approving the agreement.

25
26 ¹⁰ A.A.C. R18-9-B201(I).

1
2 **Q. ARE THERE ANY IMPEDIMENTS TO CLOSING THE BOULDERS**
3 **WASTEWATER PLANT THAT THE COMPANY NEEDED RESOLVED**
4 **PRIOR TO AGREEING TO SHUT IT DOWN?**

5 A. Yes, there are several. First, BMSC needs an alternative plant to treat the
6 wastewater that is currently being treated at the Boulders Wastewater Plant.
7 Second, BMSC has an agreement obligating it to provide the treated effluent from
8 the Boulders Wastewater Plant to the Resort for irrigating the golf course in the
9 Boulders community. That agreement is effective until 2021. Therefore, BMSC
10 would need to get the Resort's agreement to close the Wastewater Plant. The
11 Resort needs to secure an alternative source of effluent in order to agree to
12 termination of its agreement with BMSC.
13

14 **Q. HAS THE COMPANY IDENTIFIED AN ALTERNATIVE SOURCE TO**
15 **TREAT THE WASTEWATER THAT IS CURRENTLY TREATED AT**
16 **THE PLANT?**

17 A. Yes. The City is willing to treat those wastewater flows at the Scottsdale
18 Treatment Plant. This is the same plant that currently treats the other 80 percent
19 of BMSC's wastewater that is not treated at the Boulders Wastewater Plant. The
20 Scottsdale Treatment Plant has sufficient excess capacity to treat these additional
21 wastewater flows. Representatives of the City have indicated their willingness to
22 treat these additional flows from BMSC. BMSC's existing wastewater collection
23 system is already connected to the Scottsdale Treatment Plant. Upon closure of
24 the Boulders Wastewater Plant, Scottsdale would be treating all of BMSC's
25 wastewater. The Company may need to upgrade some of its collection system to
26

1 deliver the additional wastewater flows to the Scottsdale Treatment Plant, but it
2 expects it could perform any necessary upgrades within a year.

3
4 **Q. HAS THE RESORT AGREED TO TERMINATE ITS CONTRACT WITH**
5 **BMSC FOR THE EFFLUENT FROM THE WASTEWATER PLANT?**

6 A. Representatives of BMSC, the Town, the OABS and the BHOA met with the
7 Resort to discuss that, and the Resort expressed its' agreement to this change
8 provided that an alternative source of effluent could be identified and contracted
9 at an acceptable price. As a matter of background, the Resort currently purchases
10 70% of its required effluent from the Scottsdale Treatment Plant in addition to the
11 effluent it purchases from BMSC. Additional effluent produced by the Scottsdale
12 Treatment Plant is available to the Boulders Resort in sufficient quantities to
13 replace the effluent from the Boulders Wastewater Plant. Currently, the Desert
14 Mountain Golf Club ("Desert Mountain") contracts for (and is required to pay for)
15 effluent from the Scottsdale Treatment Plant well in excess of what Desert
16 Mountain requires to irrigate its turf. The Resort could purchase a portion of this
17 excess Desert Mountain effluent, which could be delivered directly to the Resort
18 through the existing lines that already deliver effluent from the Scottsdale
19 Treatment Plant to the Resort's golf courses.

20 The effluent from the Scottsdale Treatment Plant is of a higher quality (less
21 salt and brine) than the effluent produced by the Boulders Wastewater Plant.
22 Therefore, the Resort could achieve a level of cost savings by using more of the
23 higher-quality effluent from the Scottsdale Treatment Plant in lieu of the effluent
24 from the Boulders Wastewater Plant.

1 **SETTLEMENT AGREEMENT TO ACCOMPLISH PLANT CLOSURE**

2 **Q. PLEASE DESCRIBE THE MAJOR TERMS OF THE SETTLEMENT**
3 **AGREEMENT.**

4 **A.** The Settlement Agreement is attached as Exhibit B. It provides for BMSC to shut
5 down the Boulders Wastewater Plant within 15 months of certain conditions being
6 satisfied. Those conditions include (1) modifying its agreement with the City of
7 Scottsdale to confirm that the Company will have continued access to capacity at
8 the Scottsdale Treatment Plant after closure of the Boulders Wastewater Plant and
9 beyond the term of its current agreement with the City; (2) modifying BMSC's
10 collection system to accommodate sending the additional flows to the Scottsdale
11 Treatment Plant; (3) the Resort agreeing to termination of its agreement with
12 BMSC for the effluent from the Boulders Wastewater Plant; and (4) the
13 Commission approving a cost recovery mechanism for the costs associated with
14 the closure of the Boulders Wastewater Plant. Once operations of the Boulders
15 Wastewater Plant have ceased, the Company will remove the structures and
16 equipment from the site, perform any necessary hazardous substance remediation,
17 and restore the site so that residential structure(s) may be constructed on the site.
18 The Company will sell the site for residential use, and share the gain on the
19 property equally with its customers.
20

21 **Q. IN ADDITION TO ELIMINATING THE ODORS ASSOCIATED WITH**
22 **THE PLANT, ARE THERE OTHER BENEFITS OF THE SETTLEMENT**
23 **AGREEMENT?**

24 **A.** Yes. BHOA understands that BMSC has an existing agreement with the City of
25 Scottsdale under which BMSC can buy additional processing capacity at the
26 Scottsdale Treatment Plant at very favorable rates through 2016. BMSC has

1 requested a 25 year extension of its existing contract with the City at these
2 attractive rates. I understand that the City is agreeable to extend the contract
3 through 2041. The Settlement Agreement will result in BMSC entering into an
4 agreement with Scottsdale for both an additional 25 years of BMSC having access
5 to additional capacity at Scottsdale's treatment plant, and at rates that are about
6 1/3 of what the current market rate is for treatment capacity. (\$6.00/gallon under
7 the Scottsdale Agreement, versus, for example, what I understand is
8 approximately \$18.00/gallon at the new Cave Creek Wastewater Treatment Plant.)
9

10 **Q. DO YOU KNOW WHAT THE FUTURE RATE IMPACTS WOULD BE**
11 **FROM CLOSING THE BOULDERS WASTEWATER PLANT AND**
12 **SENDING ALL OF THE WASTEWATER TO THE SCOTTSDALE**
13 **TREATMENT PLANT?**

14 **A.** BMSC will be addressing the possible rate impacts of closing the Plant when it
15 files its rebuttal testimony.
16

17 **Q. HAVE YOU DISCUSSED THE TERMS OF THE SETTLEMENT**
18 **AGREEMENT WITH ANY OTHER PARTIES TO THIS PROCEEDING**
19 **AND OTHER CUSTOMER REPRESENTATIVES?**

20 **A.** Yes, we have. Throughout our negotiations, we have discussed the matter with
21 representatives of the Town of Carefree, which have expressed its support for
22 closing the Boulders Wastewater Plant, and the OABS, which is also supportive
23 of the Settlement Agreement. We also met with the Commission's Staff and the
24 Residential Utility Consumer Office to brief them on the settlement developments.
25
26

1 Q. WHAT SPECIFICALLY ARE YOU REQUESTING FROM THE
2 COMMISSION AT THIS TIME?

3 A. BHOA is requesting that the Commission approve the Settlement Agreement.
4

5 **CONCLUSION**

6 Q. DO YOU HAVE ANY ADDITIONAL COMMENTS?

7 A. Yes. Nearly thirty years ago, when BMSC's predecessor first came to this
8 Commission for authorization to provide wastewater service, it indicated its
9 expectation that the Boulders Wastewater Plant would be replaced as the area
10 grew and more customers required treatment of their sewage. The Commission
11 indicated at that time that the utility could seek specific approval for such
12 replacement at the time a more definite treatment alternative was identified.
13 Though it has been 20 years since the Company first identified the City of
14 Scottsdale as a specific alternative source of treatment, the Plant that sits less than
15 100 feet from homes remains in operation. The time has come to retire the
16 Boulders Wastewater Plant, as the Company has intended to do since it first came
17 to the Commission for a CC&N. The two homeowners associations that together
18 represent 732 residential customers, and the Town of Carefree, support the
19 Settlement Agreement and the closure of the Boulders Wastewater Plant.
20

21 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

22 A. Yes.
23
24

25 308889;ssw;22938-0001
26

EXHIBIT A

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JAN - 3 1980

DOCKETED BY	mjl
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1 BUD TINS
Chairman
2 JIM WEEKS
Commissioner
3 JOHN AHEARN
Commissioner
4

5 IN THE MATTER OF THE APPLICATION)
OF THE BOULDERS CAREFREE SEWER)
6 CORPORATION FOR CERTIFICATE OF)
CONVENIENCE AND NECESSITY FOR)
7 SEWAGE TREATMENT SYSTEM.)
8

DOCKET NO. U-2361

DECISION NO. 50544

OPINION AND ORDER

9 DATE OF HEARING: November 13, 1979

10 PLACE OF HEARING: Phoenix, Arizona

11 HEARING OFFICER: Wm. R. Giese

12 APPEARANCES: Barney Paulsen, Assistant Director, Utilities
Division, on behalf of the Arizona Corporation
13 Commission

14 Richard Hoffarth, Engineer, Utilities Division,
on behalf of the Arizona Corporation Commission

15 Brown & Bain, by Cary D. Jones, on behalf of
16 the Applicant

17 FINDINGS OF FACT

18 1. The applicant, Boulders Carefree Sewer Corporation, is a
19 wholly owned subsidiary of Boulders Carefree Corporation, both Arizona
20 corporations, having the same officers and directors. Boulders
21 Properties, Inc. hereinafter referred to has the same officers, direc-
22 tors, and shareholders as Boulders Carefree Corporation.

23 2. The applicant has applied for a Certificate of Convenience
24 and Necessity to construct, maintain and operate a sewage treatment
25 plant and system consisting of lines, connections, manholes and all
26 necessary equipment in the area more particularly described herein
27 lying in Maricopa County, Arizona. In addition, the applicant re-
28 quested approval of: (a) proposed rates to be charged users for sewer
29 service, (b) a contract with Desert Foothills Sanitary District to
30 process the sewage originating within the District, (c) an effluent
31 contract proposed between applicant and Boulders Carefree Corporation
32 for the sale of effluent from the applicant's sewage treatment

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JAN - 3 1980

DOCKETED BY

mjl

1 BUD TINS
Chairman
2 JIM WEEKS
Commissioner
3 JOHN AHEARN
Commissioner
4

5 IN THE MATTER OF THE APPLICATION)
OF THE BOULDERS CAREFREE SEWER)
6 CORPORATION FOR CERTIFICATE OF)
CONVENIENCE AND NECESSITY FOR)
7 SEWAGE TREATMENT SYSTEM.)
8

DOCKET NO. U-2361

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OPINION AND ORDER

9 DATE OF HEARING: November 13, 1979

10 PLACE OF HEARING: Phoenix, Arizona

11 HEARING OFFICER: Wm. R. Giese

12 APPEARANCES: Barney Paulsen, Assistant Director, Utilities
Division, on behalf of the Arizona Corporation
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29 service, (b) a contract with Desert Foothills Sanitary District to
30 process the sewage originating within the District, (c) an effluent
31 contract proposed between applicant and Boulders Carefree Corporation
32 for the sale of effluent from the applicant's sewage treatment

1 facilities, and (d) for future movement of the present site of appli-
2 cant's sewage treatment plant to another site in the area. By amend-
3 ment to its original application, the applicant requested approval for
4 construction of an additional interim sewage treatment plant in the
5 approximate amount of \$258,738 and approval of financing for the addi-
6 tional interim sewage plant. By the amendment, the applicant also
7 requested higher rates for sewer service than proposed in its original
8 application. At the hearing, the applicant also amended its original
9 application to include the Carefree Drive Improvement District within
10 its certificated area and for the transfer of the assets and Certifi-
11 cate of Convenience and Necessity of Carefree Water Company, Inc. for
12 sewer services in said area as provided in Arizona Corporation
13 Commission Decision No. 34518, to Boulders Carefree Sewer Corporation.

14 3. The Maricopa County Board of Supervisors on August 6, 1979
15 granted a franchise to Boulders Carefree Sewer Corporation for the
16 right to construct, maintain and operate a sewage treatment plant and
17 system for the proposed certificated area. The applicant has also
18 received the approval of the Arizona State Land Department and the
19 Maricopa County Health Department to the granting of the certificate
20 of convenience and necessity.

21 4. The Boulders Carefree Corporation is the developer of a
22 real estate development called "Boulders Carefree" Units 1 through 5
23 to date, in the Carefree area consisting presently of an aggregate
24 total of 249 lots, a golf course and club house. At the present time,
25 approximately 143 residential units are constructed and occupied at
26 "Boulders Carefree." Boulders Properties, Inc., an affiliate of
27 Boulders Carefree Corporation, is the owner of a private sewage
28 treatment plant and system. This sewage treatment plant and system
29 was originally built to serve only the residents and golf course in
30 Boulders Carefree development, but is now processing all the treated
31 sewage in Carefree. The sewage treatment plant is presently serving
32 approximately 200 users including 15 commercial users. The present
sewage treatment plant is operating to capacity and construction of

Page 3

U-2361

Decision No. 50541

1 an additional treatment plant is necessary to process sewage for
2 additional users anticipated during the next 3 to 5 years. The exist-
3 ing sewage treatment plant (Defiance package plant) has a capacity of
4 approximately 120,000 gallons per day and the additional plant (Smith
5 & Loveless package plant) will have a capacity of about 60,000 gallons
6 per day. The new Smith & Loveless package treatment plant has already
7 been contracted for and is expected to be on the line in service by
8 March 1'80, according to the applicant. Testimony was presented
9 indicating long-term future growth potential of 1,000 to 1,200 more
10 hookups in the Boulders development and an unknown number in other
11 parts of the proposed certificate area. It was indicated that when
12 this occurred in approximately 10 years, more or less, the peak load
13 would run 750,000 to a million gallon per day requiring construction
14 of an entirely new sewage treatment plant. The applicant anticipates
15 that all other future treatment plant construction would be at a
16 different site than the present location of the two package plants
17 and has requested approval of site change when and if this occurs.

18 5. The applicant proposes the construction at this time of
19 an additional sewage treatment plant to increase the present capacity
20 of 120,000 gallons per day to 180,000 gallons per day. This construc-
21 tion would occur at the present site of the Boulders Properties, Inc.
22 sewage treatment plant and the initial cost to the applicant of con-
23 structing this Smith & Loveless package plant and related equipment
24 including sewer lines, would be approximately \$258,738. It is
25 anticipated that the financing for the additional treatment plant
26 would be provided by a refundable advance in aid of construction from
27 Boulders Carefree Corporation in an amount sufficient to construct
28 the required mains and lines estimated to be approximately \$140,638
29 and a short-term loan from Boulders Carefree Corporation to the
30 applicant in the approximate sum of \$118,100. The proposed loan would
31 bear interest at the rate of interest which Boulders Carefree Corpora-
32 tion has to pay for the advance funds, estimated initially at 2%

1 greater than the prime rate of interest. A portion of the funds
2 necessary to construct the interim plant and to repay the foregoing
3 debt would be provided by hookup fees, in the form of a contribution
4 in aid of construction charge to existing users not within the
5 Boulders development and all future users regardless of their location
6 within the certificated area.

7 6. According to the applicant, the Boulders Carefree Corpora-
8 tion will make a contribution of capital to the applicant of \$250,000.
9 This contribution to capital will consist of the existing sewage
10 treatment facility (Defiance package plant) with an estimated re-
11 placement cost of \$225,000 and \$25,000 cash for working capital. Upon
12 certificate approval, Boulders Properties, Inc. will merge into
13 Boulders Carefree Corporation and the present package plant will be
14 transferred to Boulders Carefree Corporation and then to the applicant.
15 The real estate upon which the present Defiance package plant and new
16 Smith & Loveless package plant is located is leased from another
17 party. The present lease fee is \$2,000 per year.

18 7. Mr. Edward F. Everett, President of Carefree Water Company,
19 Inc., testified at the hearing that the Board of Directors and stock-
20 holders of Carefree Water Company, Inc. had approved of the transfer
21 of its certificate for sewer services only and its sewer assets to the
22 applicant. The Carefree Water Company has no sewer plant and presently
23 all its sewage is treated by Boulders Properties, Inc. at its plant
24 without charge. The certificated area of Carefree Water Company, Inc.
25 includes portions of the area known as Carefree Drive Improvement
26 District. The assets of Carefree Water Company consist of a collection
27 system, a force main and two leach fields. The personal property
28 assets of Carefree Water, Inc. used in its sewer operation and its
29 certificate would be transferred to the applicant upon Commission
30 approval without cost. The real property owned by Carefree Water
31 Company, Inc. used in its sewer service would be sold to the applicant
32 at the appraised value. Mr. Everett further testified that Carefree

1 Water Company, Inc. has no line extension agreements or refundable
2 deposits due its users. Mr. Everett is presently the certified
3 operator and manager of the Boulders Properties, Inc. plant and the
4 Carefree Water Company, Inc. collection system and it is contemplated
5 that he will continue in that capacity for the applicant. Mr. Harry R.
6 Keller, Assistant Maricopa County Engineer and Deputy Superintendent
7 of Streets, testified that his department consented to the granting of
8 the certificate to the applicant, including the area known as the
9 Carefree Drive Improvement District. He also testified that the
10 Carefree Drive Improvement District would not be dissolved until its
11 bonded indebtedness is paid in full by approximately 1988. This
12 bonded indebtedness appears to have been incurred by the Carefree Drive
13 Improvement District when it constructed a force main to assist
14 Carefree Water Company to get the district sewage to the Boulders
15 Properties, Inc. treatment plant. At the present time, a loose
16 accounting system appears to exist for the users of the Boulders
17 treatment plant in that Carefree Water Company bills all users the
18 monthly fee and then takes operating expenses out of monies collected.

19 8. The Desert Foothills Sanitary District and Desert Foothills
20 Improvement District both have the same boundaries and are not included
21 in the proposed certificated area. These districts have no sewer
22 service at present and are served by septic systems. Eventually, the
23 applicant intends to process the sewage originating within these
24 districts and has submitted a proposed contract (Exhibit 11) with the
25 districts for Commission approval. The agreement appears to be in
26 proper form except a commencement date should be provided therein.

27 9. The applicant proposes to enter into a contract with the
28 Boulders Carefree Corporation for the sale of its effluent and a copy
29 of the proposed contract (Exhibit 12) is submitted for approval. As
30 a result of the hearing, the applicant has now submitted an amendment
31 to Exhibit 12, making certain revisions in the original proposed
32 contract as to commencement date, sale price of effluent, and billing

1 cycle. The contract as amended provides for an initial sale price of
2 the effluent of \$12 for each acre foot, subject to review and revision
3 every two years. The purchaser of the effluent, Boulders Carefree
4 Corporation, intends to use the effluent for irrigation purposes on
5 one or more of its golf courses.

6 10. The present rates and the proposed rates of the applicant are
7 as set forth in Amended Exhibit 10 attached hereto and incorporated
8 herein as part of these Findings of Fact.

9 CONCLUSIONS OF LAW

10 1. The Arizona Revised Statutes give the Arizona Corporation
11 Commission the power to regulate and supervise public service corpora-
12 tions, determine and prescribe the rates and require said corporations
13 to obtain a certificate of convenience and necessity.

14 2. There is a present and continuous need for a sewage treatment
15 plant and system to serve the population in the proposed certificated
16 area.

17 3. The Boulders Carefree Sewer Corporation is a fit and proper
18 entity to receive a certificate of convenience and necessity for the
19 operation of a sewage treatment plant and system consisting of lines,
20 connections, manholes and all necessary equipment.

21 4. Interim rates may be granted where there exists an immediate
22 and urgent need therefore.

23 5. The interim rates and charges established herein are just
24 and reasonable.

25 ORDER

26 WHEREFORE, IT IS ORDERED: That Boulders Carefree Sewer Corporation
27 be granted a certificate of convenience and necessity to construct,
28 maintain and operate a sewage treatment plant and system consisting of
29 lines, connections, manholes and all necessary equipment in an area
30 in Maricopa County, Arizona, more particularly described as follows:

31 -
32 -

1. Section 35, Township 6 North, Range 4 East, Gila and Salt River Base and Meridian.
2. Section 36, Township 6 North, Range 4 East, Gila and Salt River Base and Meridian, except that part of Section 36 situated south of Cave Creek Road in the Southeast Quarter (SE 1/4) of said Section 36.
3. Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 34, Township 6 North, Range 4 East, Gila and Salt River Base and Meridian.
4. East half (E 1/2) of Southeast Quarter (SE 1/4) of Section 34, Township 6 North, Range 4 East, Gila and Salt River Base and Meridian.
5. Section 2, Township 5 North, Range 4 East, Gila and Salt River Base and Meridian.
6. Section 11, Township 5 North, Range 4 East, Gila and Salt River Base and Meridian.
7. East half (E 1/2) of Section 3, Township 5 North, Range 4 East, Gila and Salt River Base and Meridian.
8. Except that portion of the Area described in paragraphs 1 through 8 hereof that is currently situated within the boundaries of the Desert Foothills Sanitary District and the Desert Foothills Improvement District, described as follows:

Desert Foothills Sanitary District and
Desert Foothills Improvement District (Both
Districts Have the Same Boundaries).

Beginning at the intersection of the monument line of Cave Creek Road and the north-south midsection line of Section 35, Township 6 North, Range 4 East, Gila and Salt River Base and Meridian; thence northerly along said midsection line to the North Quarter (N 1/4) corner of said Section 35, thence westerly along the north line of said Section 35 to the northwest corner of said Section 35; thence southerly along the west line of said Section 35 to the southwest corner of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) of said Section 35; thence continue southerly along the west line of Lots 268, 269, 270 and 271 of Carefree, Arizona, as recorded in Book 80 of Maps, Page 27, Maricopa County Recorder, to the southwest corner of said Lot 268; thence continue southeasterly along the southwesterly line of said Lot 268 to the west right-of-way line of Scottsdale Road; thence continue southerly along said right-of-way line to the southeast corner of Lot 263 in said Carefree,

1 Arizona; thence southeasterly to the inter-
2 section of the monument lines of Scottsdale
3 Road and Bloody Basin Road; thence north-
4 easterly along the monument line of Bloody
5 Basin Road to a point of intersection with
6 the east line extended of Lot 66 of said
7 Carefree, Arizona; thence northwesterly
8 along said east lot line extended a distance
9 of 166.75 feet beyond the southeast corner
10 of said Lot 66; thence South 67°01'40" West
11 141.91 feet; thence North 46°00'00" West
12 215.00 feet; thence South 52°00'00" West
13 144.00 feet to the northeasterly right-of-
14 way line of Sidewinder Road; thence continue
15 South 52°00'00" West to the monument line
16 of Sidewinder Road; thence northwesterly
17 along the monument line of Sidewinder Road
18 to the monument line of Elbow Road; thence
19 westerly along the monument line of Side-
20 winder Road to the monument line of Carefree
21 Drive; thence southwesterly along the
22 monument line of Carefree Drive to the
23 monument line of Scottsdale Road; thence
24 northerly along the monument line of Scotts-
25 dale Road to the monument line of Cave
26 Creek Road; thence southeasterly along the
27 monument line of Cave Creek Road to the
28 north-south midsection line of said Section
29 35, the point of beginning.

16 IT IS FURTHER ORDERED: That Carefree Water Company, Inc. is
17 authorized to transfer to Boulders Carefree Sewer Corporation its
18 assets and certificate of convenience and necessity for sewer services
19 as provided in Arizona Corporation Commission Decision No. 34518.

20 IT IS FURTHER ORDERED: That the applicant be authorized to
21 establish interim rates for its sewer service as follows:

<u>Service</u>	<u>Rate</u>
22 Residential	\$10.00/month
23 Non-Restaurant	\$25.00/month plus
24 Commercial	\$.75 per 1,000 gallons
25	of water used
26 Restaurants	\$34.00/month plus
27	\$1.00 per 1,000
28	gallons of water used
29 Carefree Inn	\$1,100.00/month
30 Golf Course	Sale Price \$12.00/acre
31 Effluent	foot
32	

1 IT IS FURTHER ORDERED: That non-refundable plant capacity charges
2 in contribution of construction to be charged existing sewer users are
3 hereby approved as follows:*

4 Existing Commercial Users	\$900.00 to \$3,600.00/per installation**
6 Existing Residential "Non-Boulders" Users	\$475.00/per installation
8 Carefree Inn	\$65,500.00

9 ** The charge will be made consistent with the manner in which the
10 Carefree Drive Improvement District (the District in which these
11 commercial users are located) has historically assessed commercial
12 users for sewer improvements. The total, aggregate amount to be
13 charged to these users will be approximately \$47,450.

14 IT IS FURTHER ORDERED: That non-refundable plant capacity charges
15 in contribution of construction to be charged new sewer users are
16 hereby approved as follows:*

17 Residential: An amount equal to \$18.00 times the square root of
18 the area in square feet of the structure, which area shall be computed
19 in accordance with the standards of the Building Owners and Managers
20 Association.

21 Commercial: \$1,000.00, plus an amount equal to \$18.00 times the
22 square root of the area in square feet of the structure, which area
23 shall be computed in accordance with the standards of the Building
24 Owners and Managers Association.

25 Restaurant: \$2,000.00, plus an amount equal to \$18.00 times the
26 square root of the area in square feet of the structure, which area
27 shall be computed in accordance with the standards of the Building
28 Owners and Managers Association.

29 IT IS FURTHER ORDERED: That at the time of hearing on the appli-
30 cation for a permanent rate increase further evidence shall be presented
31 on a plant capacity charge for all classifications of new users, for
32 review by the Commission.

IT IS FURTHER ORDERED: That the interim rates authorized herein
shall be effective as of January 1980 usage and that the applicant
shall advise each of its customers by mail of the interim rates author-
ized herein prior to January 1980 usage.

* The plant capacity charge shall be a one time charge for sewage
treatment facilities provided by Boulders Carefree Sewer Corporation.

1 IT IS FURTHER ORDERED: That monies collected on the foregoing
2 interim rates shall be subject to refund to customers in the event the
3 permanent rate when established is less than the aforesaid interim
4 rate and the interim rate shall remain in effect until permanent rates
5 are established for Boulders Carefree Sewer Corporation.

6 IT IS FURTHER ORDERED: That Boulders Carefree Sewer Corporation
7 shall make formal application for permanent rate relief to this
8 Commission on or before March 1, 1981, based on a test year ending
9 December 31, 1980.

10 IT IS FURTHER ORDERED: That the proposed contract with Desert
11 Foothills Sanitary District (Exhibit 11) be approved with the addition
12 of a commencement date of said contract.

13 IT IS FURTHER ORDERED: That the proposed effluent contract
14 (Exhibit 12) as amended between Boulders Carefree Sewer Corporation
15 and Boulders Carefree Corporation for the sale of effluent from the
16 applicant's sewage treatment facilities, be approved.

17 IT IS FURTHER ORDERED: That approval of a new site for future
18 plant construction be denied as the request is too indefinite as to
19 time and can be submitted for approval prior to or simultaneous with
20 other approvals which will be necessary when definite plans are made.

21 IT IS FURTHER ORDERED: That the construction of an additional
22 sewage treatment plant (Smith & Loveless package plant) and the
23 financing therefore as proposed by the applicant be approved.

24 IT IS FURTHER ORDERED: That Boulders Carefree Sewer Corporation
25 shall keep adequate financial records of its operations in accordance
26 with established accounting procedures and the rules and regulations
27 of the Arizona Corporation Commission.

28 IT IS FURTHER ORDERED; That the request for a permanent rate
29 increase as proposed by applicant be, and hereby is denied.

30 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

31
32 CHAIRMAN

COMMISSIONER

COMMISSIONER

EXHIBIT B

WASTEWATER TREATMENT PLANT CLOSURE AGREEMENT

This WASTEWATER TREATMENT PLANT CLOSURE AGREEMENT (this "Agreement") is made this 17th day of September, 2009, by and between the BOULDERS HOME OWNERS ASSOCIATION, a non-profit Arizona corporation ("BHOA") and BLACK MOUNTAIN SEWER CORPORATION, an Arizona public service corporation ("BMSC") (individually, a "Party" and collectively, "Parties"), for the purposes and consideration set forth hereinafter.

RECITALS

A. BMSC is a public service corporation as defined in Article 15, Section 2 of the Arizona Constitution. BMSC owns and operates certain wastewater collection, transmission and treatment facilities and holds a certificate of convenience and necessity granted by the Arizona Corporation Commission (the "ACC") authorizing BMSC to provide sewer utility service within portions of the Town of Carefree and the City of Scottsdale.

B. BHOA is an association of 332 home and property owners in the northern portion of the area known as the Boulders community in North Scottsdale and Carefree, Arizona. A map depicting the general location of the Boulders community is attached hereto as Exhibit A to this Agreement. The Boulders community also includes the Boulders Resort and Club (the "Resort"). The Resort is located in north Scottsdale and includes a hotel, clubhouse, pool, tennis courts, various landscaped areas, two 18-hole championship golf courses, and numerous residential units. BHOA owns and controls the common areas and BHOA and its members are customers of BMSC, as the entire Boulders community is located within BMSC's certificated service territory.

D. At the present time, BMSC operates a single wastewater treatment plant known as the Boulders East Plant (the "Plant") within the Resort. The Plant currently has a permitted capacity of 120,000 gallons per day ("gpd") and a maximum treatment capacity of 160,000 gpd. BMSC currently treats an average 120,000 gpd of wastewater and delivers all effluent from the Plant to the Resort pursuant to an Effluent Delivery Agreement, dated March 2001. The remainder of BMSC's wastewater is delivered to the City of Scottsdale for treatment, pursuant to a Wastewater Treatment Agreement, dated April 1, 1996 ("Scottsdale Agreement").

E. As required by ACC Decision No. 69164 (December 5, 2006), BMSC has made substantial improvements to its wastewater collection systems. These improvements have been successful in addressing odors from the Company's collection system. However, fugitive odors continue to be a problem at the Plant, as do intermittent noises and traffic from an assortment of trucks and related vehicles servicing the Plant due primarily to its location within the BHOA and in the immediate proximity of residential properties. Because these odors and noises remain largely within the Plant's normal operating parameters, the parties believe that the only viable remedy to remove all odors and noises/truck traffic from the surrounding community is closure of the Plant. This is true, despite the parties' agreement that the Plant is being operated by

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BMSC in compliance with all applicable law and regulation, and that such utility property is a used and necessary asset of BMSC.

F. BHOA represents that the closure of the Plant is supported by the Boulders community, the Town of Carefree, and the City of Scottsdale, all of whom, in addition to BMSC's customers, have an interest in the closure of the Plant. Therefore, in order to pursue closure of the Plant, the Parties desire to enter into an agreement setting forth the terms and conditions under which BMSC will close the Plant and clarify each Party's rights and obligations with respect to that closure and the associated regulatory and ratemaking approvals.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and hereby agree as follows:

AGREEMENT


1. Incorporation of Recitals. Each of the recitals set forth above are hereby incorporated into this Agreement by this reference as if fully set forth herein.

2. Closure of the Plant. BMSC agrees to close the Plant subject to the terms and conditions set forth hereinafter. As used herein, the terms "closure" and "close" in reference to the Plant shall mean the termination of the wastewater treatment operations at the Plant, removal of the physical structure of the Plant and the associated equipment that is not necessary for the continued operation of the wastewater collection and transportation systems and remediation and restoration of the Plant's associated property as required by applicable law and regulation.

a. Conditions Precedent to Plant Closure. BMSC agrees to commence the closure of the Plant if the following conditions are satisfied:

i. Downstream Collection System Line Capacity. The downstream collection system line from the Plant to the City of Scottsdale must have sufficient capacity to support an additional 120,000 gpd flow of wastewater. If engineering evaluations conducted by BMSC or its agents determine that the downstream collection system line lacks sufficient capacity to support the extra flow, BMSC agrees to upgrade the system to provide sufficient capacity for additional flow if it determines, in its discretion and in consultation with BHOA, such an upgrade is not prohibitively expensive for BMSC and is in the best interests for BMSC and its ratepayers.

ii. Flow-through to the City of Scottsdale. Engineering evaluations conducted by BMSC or its agents must demonstrate that the Plant's intake and outflow lines can be connected to permit flow-through of wastewater to the City of Scottsdale's wastewater treatment system in the same or similar manner as BMSC currently delivers flows from its customers to the City of Scottsdale system under the Scottsdale Agreement. BMSC agrees to modify the Plant's system to permit such flow-through if it determines, in its discretion and in consultation with BHOA, such an upgrade is not prohibitively expensive for BMSC and is in the best interests for BMSC and its ratepayers.



iii. Wastewater Treatment Agreement with the City of Scottsdale. BMSC must successfully negotiate the purchase of 120,000 gpd of additional wastewater treatment capacity to treat the flows currently being treated at that Plant. In addition, BMSC must sign an amendment to the Scottsdale Agreement that (1) extends BMSC's right to purchase additional capacity beyond December 21, 2016; (2) states that BMSC's right to capacity shall survive the termination of the Scottsdale Agreement; (3) states that the City of Scottsdale cannot terminate the Scottsdale Agreement if BMSC closes the Plant; and (4) provides BMSC the long-term right to purchase additional capacity at market rates.

iv. Effluent Agreement with the Resort. BMSC currently has an agreement with the Resort which requires BMSC to deliver all effluent generated at the Plant to the Resort through March 2021. In the agreement, BMSC covenanted to continue to operate the Plant and to not reduce the amount of effluent produced by the Plant. BMSC must sign an agreement with the Resort whereby the Resort agrees to allow the termination of the Effluent Agreement at no or limited cost to BMSC.

v. Approval of Plant Closure. BMSC must seek and obtain all the necessary local, county, state, and/or federal approvals for the closure of the Plant.

vi. ACC Approval of Cost Recovery for Plant Closure. ACC must approve a cost recovery mechanism that permits BMSC to recover a return on and of the capital costs of closure, which costs include, without limitation, the costs of procuring additional capacity from the City of Scottsdale, the costs of engineering and other analyses necessary to complete the closure, any system upgrades required as a result of the closure and/or the delivery of the flows previously treated at the Plant to the City of Scottsdale. BMSC must also be authorized recovery of any reasonable costs of reaching agreement with the BHOA, the City of Scottsdale and the Resort as required to fulfill the terms of this Agreement, including, without limitation, the costs of obtaining all necessary approval from the ACC, including rate case expense. BMSC shall have no obligation under this Agreement if the ACC does not approve such cost recovery mechanism as acceptable to BMSC in its sole discretion.

b. Termination of Operations at the Plant. BMSC agrees to use all commercially reasonable efforts to complete termination of its operation of the Plant within 15 months of the satisfaction of conditions listed in Sections 2(a) (i) – (vi), subject to government approvals and the terms and conditions set forth hereinafter.

c. Removal of Plant Structure and Associated Equipment. After terminating its operations, BMSC agrees to remove the Plant's physical structure from the Plant Property. The "Plant Property" includes the 1.03 acres of the current Plant site. BMSC agrees to remove any associated equipment or structures from the property that are not necessary for the continued operation of its wastewater collection or transportation systems.

d. Remediation of the Plant Property. BMSC agrees to be responsible for the proper management, handling, transportation, storage and disposal of any hazardous substances generated by BMSC's activities on the Plant Property. BMSC is responsible for remediating the hazardous substances directly generated by its activities on the Plant Property to the level required by applicable laws, if such remediation is required by an applicable law. The term

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"Hazardous Substances" shall mean any substance, material, pollutant, contaminant, or waste, whether solid, gaseous or liquid, that is infectious, toxic, hazardous, explosive, corrosive, flammable or radioactive, and that is regulated, defined, listed or included in any Applicable Laws, including, without limitation, asbestos, petroleum, petroleum or fuel additives, polychlorinated biphenyls, urea formaldehyde, or waste tires.

e. Restoration of the Plant Property. BMSC agrees to restore the surface and subsurface of the Plant Property to a safe and stable condition. Further, upon completing closure of the Plant structure, BMSC and its agents shall remove from the Plant Property all tools, excavated material, personal property, rubbish, waste and surplus materials in connection with the closure and/or previous operation of the Plant and leave the Plant property free and clear from all obstructions and hindrances until such time that residential structures may be constructed on the site.

3. Ownership of Plant Property. BMSC will have full and complete ownership of the Plant Property after the completion of the closure, remediation and restoration. Within 60 days of BMSC completing removal of the Plant's physical structure from the Plant Property, BHOA agrees to contribute or work with BMSC to enable transfer of the 0.2+ acres of land adjacent to the Plant to BMSC to enable development of the Plant Property. Thereafter, BMSC will determine, in its discretion, the best time to market the residential property so as to maximize its value, subject to local laws and rules applicable to development within the BHOA. BMSC further agrees to seek ratemaking treatment of such gain that would result in an equal sharing of the gain between BMSC's shareholders and ratepayers, and BHOA agrees to provide support for such ratemaking treatment of any gain of the Plant Property. Gain on sale shall be that amount over and above BMSC's basis in the Plant Property. The gain on sale shall exclude the proceeds from the 0.2+ acres "contributed" by BHOA. All proceeds from the sale of the 0.2 acres "contributed" by BHOA shall be allocated towards reducing the rate base and costs of the closure of the Plant

4. Costs of the Closure of the Plant. BMSC will be responsible for all costs related to the closure of the Plant, notwithstanding BHOA's contribution discussed in Paragraph 3.

5. Covenants.

- a. BMSC covenants and agrees to negotiate in good faith and with promptness the modifications to the agreements contemplated in Sections 2(a)(iii) and 2(a)(iv) above.
- b. BHOA covenants and agrees to lend assistance and support as requested by BMSC in relation to BMSC's efforts to close the Plant, including assisting and supporting BMSC as requested in relations to BMSC's efforts with the City of Scottsdale and the Resort. BHOA specifically covenants to assist and support BMSC, publicly and privately, in its efforts before the ACC to obtain recovery of its costs incurred under this Agreement, including rate case expense, as contemplated in Section 2.a.iv above. BHOA agrees and acknowledges that recovery of a return on and of the capital investments and the expenses incurred by BMSC and/or its parent company in reaching and

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obtaining the necessary approvals of the Agreement and thereafter closing the Plant will likely result in the need for higher utility rates by BMSC.

- c. Both Parties covenant and agree to not interfere with or cause an unreasonable delay in the removal of the Plant.

6. Risk and Indemnification. Subject to the limitations set out herein, BMSC hereby assumes any and all risks associated with the Plant's closure or other actions to be conducted by BMSC pursuant to this Agreement. BHOA shall not seek indemnification from BMSC for any and all claims, actions, costs, fees, expenses, damages, environmental investigation costs, obligations, penalties, fines, liabilities or other losses arising out of any breach or default in the performance of this Agreement by BHOA.

7. Force Majeure. Neither Party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, in case such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, floods, acts of the public enemy, interference by civil authorities, passage of laws, orders of the court, unavailability of or delays in receipt of materials, supplies or equipment, or any other cause, whether of similar nature, not within the control of the Party affected and which, by the exercise of due diligence, such Party is unable to prevent. Should any of the foregoing occur, the Parties hereto agree to proceed with reasonable diligence to correct or eliminate the condition causing the force majeure and do what is reasonable and necessary so that each Party may perform its obligations under this Agreement.

8. Term of Agreement. This Agreement shall terminate when the Parties have performed all of their obligations under this Agreement, but no earlier than the time BMSC has obtained favorable ratemaking for the costs of the closure.

9. Termination of Agreement.

a. Termination for Breach. Either Party may initiate proceedings for termination of this Agreement in the event of a breach or anticipated breach of a material term or condition by the other Party. In such event, the Party contending that a breach has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 12, below.

b. Failure of Conditions to Plant Closure. If any of the conditions listed in Paragraphs 2(a) (i) – (vi) are not satisfied, either Party may initiate proceedings for termination of this Agreement. In such event, the Party contending that a failure of a condition has or will occur shall promptly provide notice thereof to the other Party, and shall initiate proceedings in accordance with Paragraph 11, below.

10. Notices. Any notice required or permitted to be given hereunder shall be in writing and directed to the address set forth below for the Party to whom the notice is given and shall be deemed delivered (i) by personal delivery, on the date of delivery; (ii) by first class United States mail, three (3) business days after being mailed; or (iii) by Federal Express

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Corporation (or other reputable overnight delivery service), one (1) business day after being deposited into the custody of such service.

If to BMSC to: Greg Sorensen
Black Mountain Sewer Corporation dba Liberty Water
12725 W. Indian School Road, Suite D-101
Avondale, AZ 85392

With a copy to: Jay L. Shapiro
Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012


If to BHOA to: Ted Wojtasik
Rossmar & Graham
9362 E. Raintree Drive
Scottsdale, AZ 85260

With a copy to: Scott Wakefield
Ridenour, Hinton & Lewis
201 N. Central Avenue, Suite 3300
Phoenix, AZ 85004

Any Party may designate another address for notices under this Agreement by giving the other Party not less than thirty (30) days advance notice.

11. Dispute Resolution. The Parties agree to use good faith efforts to resolve, through negotiation, disputes arising under this Agreement. If the Parties are unable to resolve the dispute within sixty (60) days, a Party that still believes the dispute requires resolution may pursue mediation or arbitration or commence litigation in a court or other tribunal of appropriate jurisdiction.

12. Attorneys' Fees. In the event either Party hereto finds it necessary to employ legal counsel or to bring an action at law or any other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof, the prevailing Party in such action or proceeding shall be paid its reasonable attorneys' fees and costs, and in the event any judgment is secured by such prevailing Party, all such attorneys' fees and costs shall be included in such judgment. Any arbitration shall be considered a proceeding for the purposes of this paragraph.

13. Amendments and Waiver of Conditions. No waiver by either Party of any breach of this Agreement by the other Party shall be construed as a waiver of any preceding or succeeding breach. This Agreement may be amended only in writing and may not be amended or modified by any part performance, reliance or course of dealing. 


14. Additional Acts. The Parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably required to effectuate the purposes and intent of this Agreement. Each Party shall cooperate with and provide reasonable assistance to the other party to obtain all required approvals and consents necessary to effectuate and perform this Agreement.

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. This Agreement, together with all rights, obligations, duties and privileges arising hereunder, may be assigned by either Party without the consent of the other Party. If either Party assigns its interest hereunder, then such assignment shall be set forth in a written document executed by the assignor and assignee, which document shall contain an express assumption by the assignee of all obligations of the assignor under this Agreement. The foregoing notwithstanding, the failure of an assignee or other successor in interest to execute and deliver such written document shall not terminate or otherwise limit the rights of the non-assigning Party hereunder.

16. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona.

17. Construction. The terms and provisions of this Agreement represent the results of negotiations between BMSC and BHOA, neither of which have acted under any duress or compulsion, whether legal, economic or otherwise. Each Party has had the full opportunity to review and understand the legal consequences of this Agreement. Consequently, the terms and provisions of this Agreement should be interpreted and construed in accordance with their usual and customary meaning, and BMSC and BHOA each waive the application of any rule of law providing that ambiguous or conflicting terms or provisions are to be interpreted or construed against the Party whose attorney prepared this Agreement. This Agreement represents the Parties' mutual desire to compromise and settle disputed issues. The acceptance by any Party of a specific element of this Agreement shall not be considered precedent for acceptance of that element in any other context. Nothing in this Agreement shall be construed as an admission by any Party as to the reasonableness or unreasonableness or lawfulness or unlawfulness of any position previously taken by any other Party. No Party is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Party shall offer evidence of conduct or statements made in the course of negotiating this Agreement before the Commission, any other regulatory agency, or any court. The invalidity of any provision of this Agreement shall in no way affect any other provision hereof.

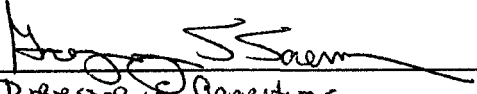
18. Interpretation. The terms of this Agreement supersede all prior and contemporaneous oral or written agreements and understandings of BMSC and BHOA with respect to its subject matter, all of which will be deemed to be merged into this Agreement. This Agreement is a final and complete integration of the understandings of BMSC and BHOA and sets forth the entire agreement between the parties with respect to the subject matter hereof. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any document, instrument, letter or other agreement executed in connection with or furtherance of this Agreement, the term, provision, document, instrument, letter or other agreement will be interpreted in a manner consistent with the general purpose and intent of this Agreement.



19. Counterparts. This Agreement may be executed in two or more original or facsimile counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, BMSC and BHOA have executed this Wastewater Treatment Plant Closure Agreement as of the date and year first written above.

BLACK MOUNTAIN SEWER CORPORATION
An Arizona corporation.

By 
Its Director of Operations

BOULDERS HOME OWNERS ASSOCIATION
A non-profit Arizona corporation

By _____
Its _____

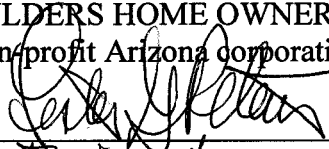
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By _____
Its _____

BOULDERS HOME OWNERS ASSOCIATION
A non-profit Arizona corporation

By 
Its President